

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KRISTEN PIERSON

Plaintiff

v.

TAW HOLDINGS 1 LLC, D/B/A

ROOSTER MEN'S GROOMING CENTER and

TYSON A. WHITE,

Defendant.

Civil Action No. 1:16-cv-10429-LTS

THE DEFENDANTS' ANSWER AND JURY DEMAND

The Defendants, TAW Holdings 1, LLC d/b/a Rooster Men's Grooming Center and Tyson A. White, hereby Answers the Plaintiff's First Amended Complaint as follows:

FIRST DEFENSE

JURISDICTION AND VENUE

1. The Defendants deny allegations of copyright infringement, but otherwise admit the allegations contained in this Paragraph.
2. The Defendants admit the allegations contained in this Paragraph.
3. The Defendants admit the allegations contained in this Paragraph.

PARTIES

4. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.
5. The Defendants admit the allegations contained in this Paragraph.
6. The Defendants denies the allegations contained in this Paragraph.

COUNT I – INFRINGEMENT OF COPYRIGHTS

7. The Defendants repeat, reassert, and incorporate by reference Paragraph 1 through 6.

8. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph. Further responding, upon information and belief, the Plaintiff provided a licensing agreement for the use of the photograph.
9. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.
10. The Defendants deny the allegations contained in this Paragraph.
11. The Defendants deny the allegations contained in this Paragraph.
12. The Defendants deny the allegations contained in this Paragraph.
13. The Defendants deny the allegations contained in this Paragraph.
14. The Defendants deny the allegations contained in this Paragraph.

WHEREFORE, the Defendants respectfully request that this Honorable Court enter judgment in favor of the Defendants on Count I and order the following:

1. The Defendants have not infringed any copyright;
2. The Plaintiff is not entitled to injunctive relief;
3. Award to the Defendants are reasonable attorney's fees and costs; and
4. Any further relief that the Court deems just and proper.

SECOND DEFENSE

The First Amended Complaint fails to state a claim in fact or law upon which relief can be granted and therefore must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6)

THIRD DEFENSE

The First Amended Complaint must be dismissed for insufficiency of process under Fed. R. Civ. P. 12(b)(4).

FOURTH DEFENSE

The Defendants have acted in good faith and with a non-willful intent at all times.

FIFTH DEFENSE

The Defendants were permissive users of alleged copyrighted work and were lawfully entitled to publish alleged copyrighted work pursuant to a licensing agreement.

SIXTH DEFENSE

The Plaintiff has not sustained actual damages as part of any alleged copyright infringement.

SEVENTH DEFENSE

The Plaintiff is unable to seek equitable relief of the Court because she enters with unclean hands.

EIGHTH DEFENSE

The Plaintiff has not registered her alleged work in conformance with 17 U.S.C. § 411(a), or has not properly or timely registered her alleged work.

NINTH DEFENSE

The Defendants usage of any alleged copyright is protected by the “fair use” doctrine under 17 U.S.C. § 107.

TENTH DEFENSE

The Plaintiff’s claim is barred by estoppel, laches, and the applicable statute of limitations.

ELEVENTH DEFENSE

The Plaintiff has failed to mitigate her alleged damages.

TWELFTH DEFENSE

The Defendants have complied with the requirements of all applicable statutes and laws of the United States and the Commonwealth of Massachusetts.

THIRTEENTH DEFENSE

The Defendants' conduct is not a proximate cause of any of the Plaintiff's alleged actual damages.

FOURTEENTH DEFENSE

The Plaintiff's copyrights are invalid and/or unenforceable.

FIFTEENTH DEFENSE

The Plaintiff's claims are barred under the Digital Millennium Copyright Act, 17 U.S.C. § 512.

SIXTEENTH DEFENSE

The Plaintiff's claim for statutory damages violated the Defendants' Fourteenth Amendment rights to due process because statutory damages sought are unconstitutionally excessive and disproportionate where the Plaintiff has not sustained actual damages.

THE DEFENDANTS REQUEST A TRIAL BY JURY.

THE DEFENDANTS,
TAW HOLDINGS 1, LLC d/b/a ROOSTERS MEN'S
GROOMING CENTER and TYSON A. WHITE,
BY THEIR ATTORNEYS,

Date: 4/26/2016

/s/ Michael P. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2016, I filed the foregoing document filed through the ECF system which will send notice electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Michael P. Johnson